



REQUEST FOR PROPOSALS FOR OUTSIDE COUNSEL FOR POSSIBLE LOCAL IMPROVEMENT DISTRICT

I. INTRODUCTION

The City of Seattle (the “City”) through its Seattle City Attorney’s Office (“City Attorney”) is requesting proposals from law firms to provide legal advice and representation relating to the formation of a local improvement district to partially fund improvement projects in the central waterfront area.

II. BACKGROUND

Currently, the City of Seattle Department of Transportation (“SDOT”) is in the process of designing improvements to the central Seattle waterfront, anticipated to include the following elements: replacement of the Elliott Bay Seawall, demolition of the existing Alaskan Way Viaduct, construction of a new Alaskan Way roadway, construction of new public open spaces, and street connections to downtown (the “Project”). The City is considering the formation of a waterfront local improvement district (the “Waterfront LID”) as a component of funding for the Project.

SDOT has conducted a preliminary feasibility analysis to determine what special benefits would be attributable to property owners from implementing certain Project elements; however, the design of the Project has progressed since the time the preliminary analysis was completed.

SDOT is in the process of selecting a real estate appraiser consultant to assist in updating the earlier preliminary feasibility analysis by answering the following questions related to formation of a Waterfront LID:

1. What are the appropriate boundaries for the Waterfront LID considering the proposed improvements?
2. What are the total maximum special benefits that the Waterfront LID area will realize should the proposed improvements be constructed?
3. What are the special benefits that individual properties/parcels will realize should the proposed improvements be constructed?

The total Project scope and timing for completion are still being developed.

III. SCOPE OF REPRESENTATION

The City Attorney's Office is seeking a law firm¹ qualified to provide legal services relating to all aspects of formation of the Waterfront LID. The City Attorney anticipates the law firm will provide legal advice prior to the formation of the Waterfront LID, and will continue providing legal services through the formation of any Waterfront LID. The selected law firm will work with the City Attorney's Office and perform services as needed, which may include preliminary advice, ensuring that the City follows all appropriate steps in the LID process, representing the City if there is a legal challenge to the formation of the Waterfront LID, drafting an assessment confirmation ordinance, presenting the final assessment roll to City Council, and representing the City in any challenge relating to adoption of the final assessment roll.

There will be no guaranteed amount of work resulting from this request for proposal ("RFP") process, and the City Attorney reserves the right to discontinue legal services or adapt the scope of representation as the City Attorney deems in the best interest of the City.

IV. MINIMUM QUALIFICATIONS

Providing outstanding legal representation to the City, its elected officials, and its

¹ The City Attorney does not intend to discourage small firms or sole practitioners from applying, and will consider all proposals demonstrating minimum qualifications. However, based upon the anticipated scope of representation, the City Attorney's Office expects that the most qualified attorneys will be members of a law firm.

employees is one of the highest priorities of the City Attorney's Office. As a result, the City Attorney has established minimum qualifications that any law firm must meet in order to be considered under this RFP. Any firm that does not demonstrate the minimum qualifications in its response will not be considered for final interviews or contract award. The minimum qualifications are:

- Admitted to practice law in the State of Washington.
- Any firm or individual attorney must have prior experience in the formation of a local improvement district, including experience representing a public entity before a court or administrative officer in a legal challenge relating to a local improvement district.

V. PROPOSAL CONTENT

To be considered, proposals must fully respond to each of the requests below. Failure to fully respond may disqualify your proposal; however, the City Attorney reserves the right to request clarification, to waive immaterial variations, or to consider proposals that vary from the following scope, as determined in the discretion of the City Attorney's Office.

1. In three double-spaced pages or less, explain why the City should consider your firm and its attorneys. Be sure to include a description demonstrating all aspects of your experience providing legal services related to formation of LIDs in Washington, including any experience with the following: (i) representing a municipality in a protest to formation of an LID; (ii) representing a municipality in a challenge to an assessment allocation; (iii) representing an LID or municipality in a protest to the assessment; (iv) experience representing a municipality in a challenge involving an error in carrying out the LID process; and (v) representing a municipality to include omitted properties in an LID.
2. Provide a summary of the qualifications and experience of the specific individual(s) who will provide legal services and representation under this engagement, specifically including demonstration of minimum qualifications. If you propose to provide representation through more than one attorney, identify the lead attorney(s).

3. Provide a copy of the resume of each attorney who is proposed to be involved in the representation. If available, a firm brochure should also be included.
4. Provide at least two public entity references for each attorney who is proposed to provide representation, including at least one reference familiar with the attorney's work on a local improvement district. Provide the name, agency, address, and phone number for each reference.
5. Disclose any potential or actual conflicts of interest. "Conflict of interest" shall have the meaning as described in the Washington Rules of Professional Conduct.
6. List the hourly rates of each attorney who will provide service under this contract, and the hourly rates of any paralegals and/or any other personnel. The hourly rate quoted should include all salary, compensation, and employee-related overhead costs. Indicate what, if any, expenses or costs you propose to bill in addition to the hourly legal fees and the basis for the charges for such expenses. If rates will be adjusted at any time during the course of representation, the method for such adjustment should be identified.
7. The City Attorney's Office will not guarantee any volume of work; however, proposals may propose alternative fee arrangements based upon the volume of work or other factors.
8. All costs of responding to this RFP shall be the sole responsibility of the proposers.

VI. REPRESENTATION AGREEMENT

The City Attorney will select one proposer to provide the legal services described in Section III – Scope of Representation. The selected proposer will be asked to execute a representation agreement prior to commencing any representation. If unable to reach agreement with the proposer initially selected, the City may terminate contract negotiations

and select and negotiate with the proposer with the next highest ranked proposal. Additionally, the City Attorney reserves the right to reject all proposals and retain outside counsel through any other process the City Attorney finds to be in the best interest of the City.

The City Attorney's Office Standard Terms and Conditions for Outside Counsel are attached as Exhibit A. If a proposer is unable to agree to any of the terms in Exhibit A, the proposal must clearly indicate that fact, and should provide a rationale for rejecting the term.

VII. INSURANCE REQUIREMENTS

The City reserves the right to require that the successful proposer provide evidence of insurance against claims for injuries to persons or damages to property and for legal malpractice that may arise out of or in connection with the performance of the contract for legal services, to the extent of the coverage described below:

Minimum Coverage Requirements:

1. The firm and/or attorneys shall provide Professional Liability (E&O) insurance with a minimum limit of liability of \$1,000,000 each claim and \$2,000,000 in the aggregate to cover the firm and/or attorneys, its employees, and others retained by the firm and/or attorneys. The coverage shall be specific to the work required under the agreement. If coverage is to be provided on a claims-made basis, the firm and/or attorneys shall warrant that any policy retroactive date precedes the effective date of the agreement. In addition, the firm and attorneys shall maintain continuous coverage throughout the Agreement and for one year beyond the completion of the agreement, or the firm and/or attorneys shall purchase an extended discovery period for not less than one year from the completion of the work.
2. The firm and/or attorneys are also responsible for complying with the Washington State laws that pertain to industrial insurance (Title 51 RCW) for its employees, contractors, and subcontractors.

Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured

retentions with respect to the City, its officers, agents, employees and volunteers. Any modification or variation from these insurance requirements shall be made by the City Attorney's Office or the City's Risk Management Division.

VIII. WASHINGTON STATE PUBLIC RECORDS ACT

Under RCW Chapter 42.56 (the *Public Records Act*) all materials received or created by the City of Seattle are considered public records. These records include but are not limited to proposal submittals and agreement documents. Under the Public Records Act the City is required to promptly make public records available upon request. However, under Washington State Law some records or portions of records are considered legally exempt from disclosure. A description of records identified as exempt by the Public Records Act can be found in RCW Chapter 42.56. If you believe any of the records you are submitting to the City as part of your proposal are exempt from disclosure, you can request that the City notify you before releasing the records. To do so, you must very clearly and specifically identify each record and the exemption(s) that may apply.

If the City receives a public disclosure request for any records you have properly and specifically identified and claimed as exempt from disclosure, the City will notify you in writing of the request and will postpone disclosure. While it is not a legal obligation, the City, as a courtesy, will allow you up to ten business days to file a court injunction to prevent the City from releasing the records (reference RCW 42.56.540). If you fail to obtain a court order within the ten days, the City may release the documents. The City will NOT assert an exemption on your behalf.

IX. PROPOSAL FORMAT, DELIVERY, AND OTHER REQUIREMENTS

Proposals must be received by **5 pm PST on April 20, 2012**. Late proposals will not be considered. Submit six hard copies of your proposal organized in divided sections with numbers that correspond to the numbered sections under "Proposal Content" above. Proposals must be signed by an authorized representative and should identify a primary contact for City communications to the proposer, including an email address for communications regarding requests for clarification. Proposals should be submitted to:

Angelica Germani
Seattle City Attorney's Office
City Hall
600 Fourth Ave., 4th Floor
PO Box 94768
Seattle, WA 98124-4769

All inquiries or communications regarding this RFP must be directed to the City's representative named below.

Name: Angelica Germani
Phone: (206) 684-0846
Email: angelica.germani@seattle.gov

Please note that if the City receives questions requesting clarification or further instruction regarding this RFP, the City may, in its discretion, post both the inquiry and any City response to the City Attorney's web-site and the Contracting Services web-site as an addendum to this RFP.

X. METHOD OF PROPOSAL EVALUATION AND FINAL SELECTION

The City Attorney will appoint an evaluation committee, including representatives from other departments, to evaluate all properly submitted proposals. The evaluation committee will initially screen the proposals and will exclude any proposals that do not demonstrate the minimum qualifications. The committee will evaluate the remaining candidates based upon the quality of the written proposals and factors below, and will select one or more candidates for an interview. After the interview (s), the committee will prepare an evaluation report and recommendation to City Attorney Peter Holmes, who will make the final selection of the firms/attorneys to be retained by the City. The City Attorney's Office will notify all proposers in writing upon the selection of the successful proposer.

Selection will be subject to applicable laws and ordinances regarding equal employment opportunity.

The primary factor the City Attorney will use to select a proposer will be the anticipated quality of services relating to the requested scope of representation as demonstrated by the written materials and oral interview. The factors considered when evaluating proposers for final selection will be as follows:

- a) Qualifications and past experience of the firm and the proposed attorneys in providing legal services relating to the formation of LIDs, including any hearings or appeals, as demonstrated through the quality and content of the written materials;
- b) Qualifications and past experience of the firm and its attorneys in providing legal services relating to the formation of LIDs, including any hearings or appeals, as demonstrated through the interview, if any;
- c) References;
- e) The complexity of LIDs the firm and its attorneys have previously worked on, and the scope of matters addressed in the past LIDs (issues with formation, legal challenges through administrative hearing or court); and
- f) The firm's fees and billing policies will also be considered, and should be commensurate with a firm's qualifications and experience; however the City is not required to hire attorneys based upon the lowest price.

XI. SCHEDULE

The City anticipates the following schedule for review and evaluation of proposals:

March 30, 2012:	RFP Published
April 20, 2012:	Proposals due at 5 PM PST
April 23-27, 2012:	Evaluation Committee reviews proposals that meet the minimum qualifications, selects proposers for oral interviews
Week of April 30th:	Interview(s)
May 7 - 9, 2012:	Committee to finalize recommendation to Peter Holmes
May 11, 2012:	Peter Holmes makes final selection
May 14, 2012:	Notify all candidates of selection, negotiate final agreement with selected proposer

The City reserves the right to modify the schedule and will make best efforts to keep all candidates informed regarding changes to the schedule.

XIII. CITY'S RESERVATION OF RIGHTS

The City reserves the right to reject any and all proposals and to waive immaterial irregularities in its sole discretion. This Request for Proposals and any resulting contract shall not be construed to confer any exclusive benefit to a proposer to provide legal services to the City. Depending upon its needs, the City Attorney's Office may elect to use another firm to provide the services described in this Request for Proposals, including firm(s) that do not submit a proposal in response to the Request for Proposals, consistent with Seattle Municipal Code 20.50.010. The decision to retain any particular firm(s) or attorney(s) will be solely within the discretion of the City Attorney's Office on a matter-by-matter basis.

The City reserves the right to designate a specific attorney(s) in a selected law firm to work on specific matters as lead counsel or associate lead counsel for the services rendered pursuant to any contract. The City further reserves the right to approve any attorney offered to provide services.



Seattle City Attorney

Peter S. Holmes

Jean M. Boler
Civil Division Chief
(206) 684-8207
jean.boler@seattle.gov

EXHIBIT A TO RFP FOR OUTSIDE COUNSEL FOR WATERFRONT LID March XX, 2012

Via email only to XXX

Name
Firm
Address 1
Address 2
City, ST Zip

Re: Legal advice related to XXX

Dear XXX:

I am writing to confirm our agreement for you to provide legal services regarding XXX. Your billing rate for this project is \$XXX per hour. Out-of-pocket expenses will be covered. Your fees and costs will be paid on a monthly basis upon the City's receipt of an itemized bill. The charges for your services are to not exceed \$XX,XXX without prior authorization from this office.

We are including for your review and retention a statement of the City's billing and outside counsel procedures (Attachment A). These procedures contain standard language that is required by the City's contracting ordinances, as well as terms required by the City Attorney.

XXX will be your primary contact in the City Attorney's Office. If you accept this arrangement, please sign below and return the original letter to me. Please feel free to contact me if you have questions regarding the nature of this engagement or City procedure. We look forward to working with you.

Very truly yours,

PETER S. HOLMES
Seattle City Attorney

By: _____

Jean M. Boler
Civil Division Chief

Name
Firm
March XX, 2012
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Accepted by: _____
Signature Date

Printed Name

**Seattle City Attorney
Outside Counsel General Terms and Billing Procedures
Attachment A**

As used in this Attachment A, “Outside Counsel” means any individual lawyer, other than an employee of the City of Seattle, or any law firm hired by the Seattle City Attorney to provide legal advice and representation to the City of Seattle and/or officers and employees of the City of Seattle.

I. Interaction with City

- A. The City Attorney¹ must be given advance notice of any significant decisions in order to be able to participate fully in making such decisions.
- B. The City Attorney must be provided with advance drafts of all significant documents (policy statements, pleadings, memoranda) in sufficient time to be able to participate fully in decisions regarding the documents.
- C. The City Attorney must routinely receive copies of all other documents, including correspondence and internal legal memoranda.
- D. The City Attorney must fully participate in all deliberations and decisions regarding possible settlement of a case.
- E. The City Attorney must participate in the selection of all consultants or experts. No subcontracting is permitted under this contract without the specific authorization of the City Attorney, and compliance with the relevant provisions of Chapter 20.42 Seattle Municipal Code.
- F. Provisions of this section may be modified to the extent necessary to comply with RPC 1.6 when there is a conflict between an individual employee represented by Outside Counsel and the City. In those circumstances, the City recognizes Outside Counsel’s duties under RPC 1.8(f).

II. Potential Conflicts of Interest

- A. Outside Counsel will be deemed to represent the entire City and all its departments, agencies, branches, boards, commissions and offices, unless specifically notified otherwise. Outside Counsel retained by the City to

¹ References in this document to obligations and rights of the City Attorney shall in most cases be made by the Assistant City Attorney or other member of the Law Department identified by the City Attorney. Outside counsel may, however, contact the City Attorney directly whenever warranted.

represent individual employees pursuant to SMC 4.64 are deemed to represent both the individual employee and the City for purposes of determining whether a conflict of interest exists.

- B. In each instance where Outside Counsel becomes aware that there may arise, that there is, or that there may be an actual or potential conflict of interest, Outside Counsel will promptly notify the City Attorney in writing and seek written waivers from the City Attorney and the individual employee represented pursuant to SMC 4.64 as appropriate under RPC 1.8(f) as soon as possible. The City Attorney may waive potential conflicts that do not involve the subject matter for which Outside Counsel has been engaged, but reserves the right to decline to waive a real or potential conflict in each case. Outside Counsel will not engage in conduct which presents a real or potential conflict of interest unless the City Attorney waives the conflict or potential conflict. The City Attorney will not issue blanket waivers.
- C. Conflicts of interest include:
 - 1. Conflicts described in the Rules of Professional Conduct;
 - 2. Situations in which Outside Counsel or any of its agents or subcontractors participate in or benefit from a transaction upon which Outside Counsel has provided or is providing advice, except for payments for Outside Counsel's legal services under this Agreement;
 - 3. Situations in which Outside Counsel provides advice or participates in any transaction that is, or would appear to a reasonable person to be, in conflict or incompatible with the proper duties of the Outside Counsel as provided in its contract, or which would affect, or would appear to a reasonable person to affect, the independent judgment of Outside Counsel.
 - 4. Any similar situation that interferes with Outside Counsel's ability to fairly and impartially advise the City and its officers or employees, or would appear to a reasonable person to do so.

III. Confidential Communication

All communications relating to the representation of the City and its employees between Outside Counsel and the City, its officers, employees or agents, whether oral or written, and all documentation whether prepared by Outside Counsel or the City shall be considered confidential and shall not be disclosed except by the written consent of the City Attorney and, if applicable, any individual employee represented pursuant to SMC 4.64 as appropriate under RPC 1.6.

IV. City Code of Ethics and Professional Conduct

- A. The reputation of the City and its officers and employees is of high importance to the City. All counsel representing the City and its officers and employees are expected to maintain high standards of professional conduct and must behave at all times throughout the representation with integrity.
- B. Outside Counsel shall comply with all provisions of the Seattle City Code of Ethics (Seattle Municipal Code Title 4 Chapter 16) applicable to Outside Counsel.
- C. Outside Counsel shall be mindful of the requirements of SMC 4.16.070(3) in providing any free legal services to individual City employees and should notify the City Attorney in advance of providing any free legal services to individual City employees.

V. Billing Procedures for Outside Counsel

- A. Billings by Outside Counsel must be submitted on a monthly basis and will be paid within thirty (30) days of submittal.
- B. Unless otherwise agreed upon in advance in writing, the City will be charged for services rendered on an hourly basis and billings will be reflected in increments of one-quarter of an hour or less.
- C. Approved out-of-pocket expenses will be reimbursed at cost.
- D. Each billing statement must be set forth for each date services were performed and the following:
 - (1) A brief summary of the services provided specified by task; block billing is not acceptable;
 - (2) The number of hours, or fractions of hours, spent by each provider;
 - (3) The hourly rates of each of the providers;
 - (4) Any costs or expenses submitted for reimbursement must be verifiable with an invoice or other back-up documentation. Expenses and disbursements must be described in detail and comply with the following:
 - (a) Air travel must be approved by the City in advance and is reimbursable at coach rates;

- (b) Other travel expense reimbursement will be consistent with the requirements of SMC 4.72.010 governing travel expenses for City employees;
- (c) The City must not be charged for courier service or other expedited mail delivery unless the urgency was caused by the City or the City requests the service;
- (d) The City will not pay for computer research provider costs;
- (e) The City will not pay costs that should be part of the firm's overhead such as phone calls, copies, courier services and postage;
- (5) Billings for experts or consultants retained by Outside Counsel must be provided in substantially similar format as outlined above;
- (6) Outside Counsel bills are subject to public disclosure. Outside Counsel should avoid including privileged information in billings that would have to be redacted in the event of a public disclosure request.
- E. Any changes in Outside Counsel's fee schedule must be discussed with the City Attorney prior to implementation.
- F. Outside Counsel has been retained because of its expertise. The City must not be billed for basic general legal or technical research necessary to educate staff or less experienced attorneys in the firm. Any extensive legal research proposed by Outside Counsel must be discussed in advance with the City Attorney and is subject to the City Attorney's approval.
- G. The City must not be billed for any time spent in preparing or reviewing the firm's billings to the City or in internal firm quality control procedures.
- H. Unless approved in advance, the City will not reimburse for time spent by more than one attorney attending meetings, witness interviews, depositions, hearings and the like.
- I. Outside Counsel will keep accurate records and books for all work provided under this agreement with the City. At the City's request and at the City's cost, Outside Counsel will permit the City to inspect and audit all pertinent books and records of counsel related to the work performed for and charged to the City, at any and all times deemed necessary by the City, including up to six years after the final payment or release of withheld amounts has been made under this agreement.

VI. Audit

Outside Counsel must keep adequate and accurate records supporting all amounts invoiced to the City, and must maintain such records for at least six years following completion of any work. Outside Counsel shall allow the City Auditor to review and audit all records relating to services provided under the contract with the City.

VII. Equal Employment Opportunity and Outreach

- A. Outside Counsel shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Outside Counsel shall take affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.
- B. If Outside Counsel will hire employees for any work under the agreement, or if counsel will subcontract any work under the agreement (with City approval), Outside Counsel shall make affirmative efforts to recruit minority and women candidates. Affirmative efforts may include the use of advertisements in publications directed to minority communities and other targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach.
- C. By executing an agreement with the City, Outside Counsel affirms that it complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42. Any violation of the requirements of the provisions in this Section 7 shall be a material breach of Agreement for which Outside Counsel may be subject to damages and sanctions provided for by the Agreement and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.

VIII. Nondiscrimination in Employee Benefits

- A. Compliance with SMC Ch. 20.45: Outside Counsel shall comply with the requirements of SMC Ch. 20.45 and Equal Benefit Program Rules

implementing such requirements, under which counsel is obligated to provide the same or equivalent benefits (“equal benefits”) to its employees with domestic partners as Outside Counsel provides to its employees with spouses. At the City’s request, Outside Counsel shall provide complete information and verification of compliance with SMC Ch. 20.45. *(For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-4529 or review information at <http://cityofseattle.net/contract/equalbenefits/>.)*

- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Section 8 shall be a material breach of contract for which the City may:
- (1) Require Outside Counsel to pay actual damages for each day that the counsel is in violation of SMC Ch. 20.45 during the term of the contract; or
 - (2) Terminate the contract; or
 - (3) Disqualify Outside Counsel from bidding on or being awarded a City contract for a period of up to five (5) years; or
 - (4) Impose such other remedies as provided for in SMC Ch. 20.45.

IX. Other Terms

- A. Use of Recycled Content Paper: Outside Counsel shall use, whenever practicable, recycled content paper on all documents submitted to the City.
- B. Americans with Disabilities Act: Outside Counsel shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this contract.
- C. Fair Contracting Practices Ordinance: Outside Counsel shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.